101st Congress, 1st Session - - - - - - - - - - House Document 101-72

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES, DENMARK, AND THE HOME GOVERNMENT OF THE FAROE ISLANDS CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF THE ONE PART AND THE HOME GOVERNMENT OF THE FAROE ISLANDS AND THE GOVERNMENT OF DENMARK OF THE OTHER PART CONCERNING FAROESE FISHING IN FISHERIES OFF THE COASTS OF THE UNITED STATES, PURSUANT TO 16 U.S.C. 1823(a)

JUNE 14, 1989.—Message and accompanying papers referred to the Committee on Merchant Marine and Fisheries and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

29-011 WASHINGTON : 1989

H560-5

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 16 U.S.C. 1801 et seq.), I transmit herewith an agreement effected by exchange of notes at Washington on March 28, 1989, extending for the period of 2 years from July 1, 1989, until July 1, 1991, and amending to conform with current U.S. law, the Governing International Fishery Agreement between the Government of the United States of America of the one part and the Home Government of the Faroe Islands and the Government of Denmark of the other part Concerning Faroese Fishing in Fisheries off the Coasts of the United States, signed at Washington on June 11, 1984. The exchange of notes, together with the present agreement, constitute a governing international fishery agreement within the meaning of section 201(c) of the act.

U.S. fishing industry interests have urged prompt consideration of this agreement and, similarly, I request the Congress give favorable consideration to this agreement at an early date to avoid disruption of cooperative ventures.

Since 60 calendar days of continuous session, as required by the legislation, will not be available before the current agreement is scheduled to expire, I recommend the Congress consider passage of a joint resolution.

GEORGE BUSH.

THE WHITE HOUSE, *June 14, 1989.*

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF THE ONE PART AND THE GOVERNMENT OF DENMARK AND THE HOME GOVERNMENT OF THE FAROE ISLANDS OF THE OTHER PART CONCERNING FAROESE FISHING IN FISHERIES OFF THE COASTS OF THE UNITED STATES

The Government of the United States of America of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part,

Considering their common concern for the rational management, conservation and achievement of optimum yield of fish stocks off the coasts of the United States;

Recognizing that the United States has established by Presidential Proclamation of March 10, 1983 an exclusive economic zone within 200 nautical miles of its coasts within which the United States has sovereign rights to explore, exploit, conserve and manage all fish and that the United States also has such rights over the living resources of the continental shelf appertaining to the United States and to anadromous species of fish of United States origin; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States has sovereign rights to explore, exploit, conserve and manage;

Noting the status of the Faroe Islands as a self-governing community within the Kingdom of Denmark;

Recognizing that the Faroe Islands are heavily dependent upon fishing;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to promote effective conservation, rational management and the achievement of optimum yield in the fisheries of mutual interest off the coasts of the United States and to establish a common understanding of the principles and procedures under which fishing may be conducted by residents and vessels of the Faroe Islands for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States has sovereign rights to explore, exploit, conserve and manage" means all fish within the exclusive economic zone of the United States (except highly migratory species of tuna), all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters while

present in the United States exclusive economic zone and in areas beyond national fisheries jurisdictions recognized by the United States and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "exclusive economic zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

a. the catching, taking or harvesting of fish;

b. the attempted catching, taking or harvesting of fish;

c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish;

d. any operations at sea, including processing, directly in support of, or in preparation for, any activity described in subparagraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity;

6. "fishing vessel" means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for

a. fishing; or

b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and

8. "marine mammal" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

ARTICLE III

1. The Government of the United States is willing to allow access for foreign fishing vessels to harvest, in accordance with terms and conditions to be established in permits issued under Article VII, that portion of the total allowable catch for a specific fishery that will not be harvested by United States fishing vessels and is determined to be available to foreign fishing vessels in accordance with United States law.

2. The Government of the United States shall determine each year, subject to such adjustments as may be appropriate and in accordance with United States law;

a. the total allowable catch for each fishery based on optimum yield, taking into account the best available scientific evidence, and social, economic and other relevant factors;

b. the harvesting capacity of United States fishing vessels in respect of each fishery;

c. the portion of the total allowable catch for a specific fishery to which access will be provided, on a periodic basis each year, to foreign fishing vessels; and

d. the allocation of such portion that may be made available to qualifying fishing vessels of the Faroe Islands.

3. The United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery in accordance with United States law. Such measures may include: inter alia:

a designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;

c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel of the total fleet may engage in a designated area for a specified fishery;

d. requirements as to the types of gear that may, or may not, be employed; and

e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Home Government of the Faroe Islands of the determinations provided for by this Article on a timely basis.

ARTICLE IV

In determining the portion of the surplus that may be made available to vessels of each country, including the Faroe Islands, the Government of the United States will decide on the basis of the factors identified in United States law including:

1. whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;

2. whether, and to what extent such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

3. whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;

4. whether, and to what extent, such nations require the fish harvested from the exclusive economic zone for their domestic consumption;

5. whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

6. whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

7. whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

8. such other matters as the United States deems appropriate.

ARTICLE V

The Government of Denmark in respect of the Faroe Islands and the Home Government of the Faroe Islands shall cooperate with and assist the United States in the development of the United States fishing industry and the increase of United States fishery exports by taking such measures as reducing or removing impediments, if any, to the importation and sale of United States fishery products, providing information concerning technical and administrative requirements for access of United States fishery products into the Faroe Islands, providing economic data, sharing expertise, facilitating the transfer of harvesting or processing technology to the United States fishing industry, facilitating appropriate joint venture and other arrangements, informing its industry of trade and joint venture oppportunities with the United States, and taking other actions as may be appropriate.

ARTICLE VI

The Government of Denmark and the Home Government of the Faroe Islands shall take all necessary measures to ensure:

1. that residents and vessels of the Faroe Islands refrain from fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage except as authorized pursuant to this Agreement;

2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and

3. that the total allocation referred to in Article III, paragraph 2.d. of this Agreement is not exceeded for any fishery.

ARTICLE VII

The Home Government of the Faroe Islands may submit an application to the Government of the United States for a permit for

each fishing vessel of the Faroe Islands that wishes to engage in fishing in the exclusive economic zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with the Annex, which constitutes an integral part of this Agreement. The Government of the United States may require the payment of fees for such permits and for fishing in the United States exclusive economic zone. The Home Government of the Faroe Islands undertakes to keep the number of applications to the minimum required, in order to aid in the efficient administration of the permit program.

ARTICLE VIII

The Government of Denmark and the Home Government of the Faroe Islands shall ensure that residents and vessels of the Faroe Islands refrain from harassing, hunting, capturing or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States exclusive economic zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

ARTICLE IX

The Government of Denmark and the Home Government of the Faroe Islands shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of the Faroe Islands is prominently displayed in the wheelhouse of such vessel;

2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the courtesies and accommodations provided to ship's officers while aboard such vessel, and owners, operators and crews of such vessel shall cooperate with observers in the conduct of their official duties, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to an owner or operator of a vessel of the Faroe Islands for any cause arising out of the conduct of fishing activities for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage; and

5. all necessary measures are taken to minimize fishing gear conflicts and to ensure the prompt and adequate compensation of United States citizens for any loss, or damage to, their fishing vessels, fishing gear or catch, and resultant economic loss, that is caused by any fishing vessel of the Faroe Islands as determined by applicable United States procedures.

ARTICLE X

The Government of Denmark and the Home Government of the Faroe Islands shall take all appropriate measures to assist the United States in the enforcement of its laws pertaining to fishing in the exclusive economic zone and to ensure that each vessel of the Faroe Islands that engages in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement officer of the United States and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

ARTICLE XI

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of the Faroe Islands or their owners, operators, or crews that violate the requirements of this Agreement or of any permit issued hereunder.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. The penalty of imprisonment may be imposed only in the case of enforcement related offenses, such as assault on an enforcement officer or refusal to permit boarding and inspection.

4. In cases of seizure and arrest of a vessel of the Faroe Islands by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of Denmark of the action taken and of any penalties subsequently imposed.

ARTICLE XII

1. The Government of the United States and the Home Government of the Faroe Islands shall cooperate in the conduct of scientific research required for the purpose of managing and conserving living resources over which the United States has sovereign rights to explore, exploit, conserve and manage, including the compilation of the best available scientific information for management and conservation of stocks of mutual interest.

2. The competent agencies of the two Governments shall cooperate in the development of a periodic research plan on stocks of mutual concern through correspondence or meetings as appropriate, and may modify it from time to time by agreement. The agreed research plans may include, but are not limited to, the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and jointly conducted research projects.

3. The conduct of agreed research during regular commercial fishing operations on board a fishing vessel of the Faroe Islands in the United States exclusive economic zone shall not be deemed to change the character of the vessel's activities from fishing to scientific research. Therefore, it will still be necessary to obtain a permit for the vessel in accordance with Article VII.

4. The Home Government of the Faroe Islands shall cooperate with the Government of the United States in the implementation of procedures for collecting and reporting biostatistical information and fisheries data, including catch and effort statistics, in accordance with procedures which will be stipulated by the United States. The Home Government of the Faroe Islands shall similarly provide such economic data as may be requested by the United States.

ARTICLE XIII

The Government of the United States and the Home Government of the Faroe Islands shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including cooperation within the framework of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XIV

Should the Government of the United States indicate to the Home Government of the Faroe Islands that nationals and vessels of the United States wish to engage in fishing in the fishery conservation zone of the Faroe Islands, or its equivalent, the Home Government of the Faroe Islands will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XV

Nothing contained in the present Agreement shall prejudice the views of either Party with respect to the existing territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

ARTICLE XVI

1. This Agreement shall enter into force on a date to be agreed upon by exchange of notes, following the completion of internal procedures of both Parties, and remain in force until July 1, 1989, unless extended by exchange of notes between the parties. Notwithstanding the foregoing, either Party may terminate this Agreement after giving written notice of such termination to the other Party six months in advance.

2. At the request of either Party, this Agreement shall be subject to review by the two parties two years after its entry into force.

In witness whereof, the undersigned, being duly authorized for this purpose, have signed this Agreement.

For the Government of the United States of America:

EDWARD E. WOLFE, Jr.

For the Government of Denmark:

_____ _____.

For the Home Government of the Faroe Islands:

_____ _____.

ANNEX

APPLICATION AND PERMIT PROCEDURES

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of the Faroe Islands to engage in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage:

1. The Home Government of the Faroe Islands may submit an application to the competent authorities of the United States for each fishing vessel of the Faroe Islands that wishes to engage in fishing pursuant to this agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify

a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;

b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;

c. a specification of each fishery in which each vessel wishes to fish;

d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;

e. the ocean area in which, and the season or period during which, such fishing would be conducted; and

f. such other relevant information as may be requested, including desired transshipping areas.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions may be needed, and what fee will be required, and shall inform the Home Government of the Faroe Islands of such determinations. The Government of the United States reserves the right not to approve applications.

4. The Home Government of the Faroe Islands shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Home Government of the Faroe Islands and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each Faroese fishing vessel, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the

permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Home Government of the Faroe Islands notifies the Government of the United States of its objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Home Government of the Faroe Islands may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Parties.

AGREED MINUTE

With respect to Article IV, paragraph 4, the representatives of the Government of Denmark and the Home Government of the Faroe Islands stated that the people and economy of the Faroe Islands are heavily dependent on exports of fishery products to cover their essential needs, and with respect to Article V, stated that the Faroe Islands are not a significant market for U.S. fishery products, but that the Home Government of the Faroe Islands and the Goverment of Denmark in respect of the Faroe Islands would endeavor to promote free trade in fishery products, including products of U.S. origin.

The Department of State has the honor to refer to the agreement between the Government of the United States of America of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part concerning Faroese fishing in fisheries off the coasts of the United States, signed at Washington on June 11, 1984, and due to expire on July 1, 1989. The Department of State proposes that the agreement be extended until July 1, 1991, and that it be amended as follows:

1. In Article IV, paragraph 1, replace the phrase "of United States fish or fishery products" with "of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;"

2. In Article IV, paragraph 2 replace the present text with the following: "whether and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;"

3. In Article VII, before the final sentence, insert the following: "While such fees shall be applied without discrimination, the fee level may vary depending upon, INTER ALIA, whether, in the judgment of the United States, vessels or nationals of the Faroe Islands are harvesting United States origin anadromous species at unacceptable levels, or whether the Home Government of the Faroe Islands and the Government of Denmark are failing to take sufficient action to benefit the conservation and development of United States fisheries.".

4. In Article VIII, insert after the words "exclusive economic zone," the phrase "and any marine mammal of U.S. origin, such as North Pacific fur seal, on the high seas,".

5. In Article XVI, replace the date "July 1, 1989" with the date "July 1, 1991".

The United States proposed that if the extension and the amendments set out in this note are acceptable to the Home Government of the Faroe Islands and the Government of Denmark, this note and the reply of the Home Government of the Faroe Islands and the Government of Denmark to that effect shall constitute an agreement between the Parties amending the agreement between the Parties and extending that agreement until July 1, 1991. This agreement shall enter into force on a date to be agreed upon by exchange of notes following the completion of internal procedures of both parties.

DEPARTMENT OF STATE,
Washington, March 28, 1989.

ROYAL DANISH EMBASSY,
Washington DC, March 29, 1989.

Department of State, Washington, DC.

The Royal Danish Embassy presents its compliments to the Department of State and has the honor to acknowledge receipt of the Department's note of March 28, 1989, which reads as follows:

> The Department of State has the honor to refer to the agreement between the Government of the United States of America of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part concerning Faroese fishing in fisheries off the coasts of the United States, signed at Washington on June 11, 1984, and due to expire on July 1, 1989. The Department of State proposes that the agreement be extended until July 1, 1991, and that it be amended as follows:
>
> 1. In Article IV, paragraph 1, replace the phrase "of United States fish or fishery products" with "of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;"
>
> 2. In Article IV, paragraph 2, replace the present text with the following: "whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;"
>
> 3. In Article VII, before the final sentence, insert the following: "While such fees shall be applied without discrimination, the fee level may vary depending upon, INTER ALIA, whether, in the judgement of the

United States, vessels or nationals of the Faroe Islands are harvesting United States origin anadromous species at unacceptable levels, or whether the Home Government of the Faroe Islands and the Government of Denmark are failing to take sufficient action to benefit the conservation and development of United States fisheries.".

4. In Article VIII, insert after the words "exclusive economic zone," the phrase "and any marine mammal of U.S. origin, such as North Pacific fur seal, on the high seas,".

5. In Article XVI, replace the date "July 1, 1989" with the date "July 1, 1991".

The United States proposes that if the extension and the amendments set out in this note are acceptable to the Home Government of the Faroe Islands and the Government of Denmark, this note and the reply of the Home Government of the Faroe Islands and the Government of Denmark to that effect shall constitute an agreement between the Parties amending the agreement between the Parties and extending that agreement until July 1, 1991. This agreement shall enter into force on a date to be agreed upon by exchange of notes following the completion of internal procedures of both parties.

The Royal Danish Embassy has the honor to inform the Department of State that the extension of the agreement between the Government of the United States of America of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part concerning Faroese fishing in fisheries off the coasts of the United States and the amendments set out in the Department of State's note of today's date are acceptable to the Government of Denmark and the Home Government of the Faroe Islands, and that the Department of State's note and this reply note shall constitute an agreement between the Government of the United States of America of the one part and the Government of Denmark and the Home Government of the Faroe Islands of the other part amending the agreement between the Parties and extending the agreement until July 1, 1991. This agreement shall enter into force on a date to be agreed upon by exchange of notes following the completion of internal procedures of both Parties.

The Royal Danish Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

○